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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,109	11/30/2000	Kurt Schunke	SCHUNKE	6814
7590	04/30/2004		EXAMINER	
Leland P. Schermer, Esquire Leland Schermer & Associates, P.C. 11 Stanwix Street Pittsburgh, PA 15222			MCAULTY, TIMOTHY P	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 04/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/727,109	SCHUNKE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Timothy P McAnulty	3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 February 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 14, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 14, 16 and 17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 19.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 14,16 and 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bathrick et al. in view of Willis.

Bathrick et al. discloses in figures 1,2, and 4, a piece of motion furniture comprising a lifting mechanism 16 having a lifting arm 80,81,82,83 articulated to a footrest (not numbered) and a housing 46; an electric rotary drive mechanism 48,49 having an output member 60 fixed to and imparting rotational motion to a crossbar 50,51, said crossbar linked to said lifting arm and connected to said footrest; and stationary support means 14,15 connected to said housing via a bracket 71 including rods received in aligned bores in the wall of said housing. Bathrick et al. does not disclose a pantographic style linkage to facilitate movement of said footrest. However, Willis teaches in figures 7-9 a piece of motion furniture comprising, *inter alia*, a pantographic linkage 84 to facilitate movement of a footrest 14. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Bathrick et al. in view of the teachings of Willis to facilitate movement of said footrest with a pantographic linkage so as to facilitate said footrest to adjust from an elevated horizontal position to a retracted vertical position thus providing additional footrest positioning increasing the versatility of said piece of furniture, especially for providing easy access and exit from said furniture for a user.

***Response to Arguments***

3. Applicant's arguments with respect to claims 14,16, and 17 have been considered but are moot in view of the new ground(s) of rejection. Although Bathrick et al. does not disclose a pantographic linkage, Willis teaches a pantographic linkage facilitating the movement of a footrest.

The prosecution disclaimer made by applicant's counsel as arguments is afforded little weight when construing the claim language in the broadest reasonable interpretation. Any limitations argued to be in the claims must be clearly set forth in the claims. Applicant cannot rely on counsel's arguments to limit the scope of the claims during prosecution. It is recommended that if the term motion furniture is meant to exclude beds, such a limitation must be in the claims themselves. The patent references submitted with the intent to show that motion furniture does not include beds are not conclusive. The references merely state that chairs and other such furniture is commonly referred to as "motion furniture." That evidence, however, does not clearly establish the fact that beds are not also commonly referred to as "motion furniture." The evidence provided merely establishes that chairs are motion furniture but does not establish that beds are not. See generally *In re Payne et al.* 203 USPQ 245.

Furthermore, the definition of "bed" is "a piece of furniture on or in which to lie and sleep; a place for sleeping." See Merriam-Websters Collegiate Dictionary Tenth Edition 1999. A reclining chair meets this broad definition of a bed, at least when such a chair is in its reclined state. As such, the disclosures of Bathrick et al. and Willis are applicable to the present claimed invention.

*Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P McAnulty whose telephone number is 703.308.8684. The examiner can normally be reached on Monday-Friday (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703.308.3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tpm   
28 April 2004

  
4/29/04  
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